IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE

CRIMINAL APPEAL NO.644 OF 1994

1. Kashiram Jairam Pawar.
   Prisoner No. C/2153,
   Nasik Road Central Prison,
   Nasik Road.

2. Sakubai W/o Kashiram Pawar .. Appellants.

V/s

The State of Maharashtra .. Respondent.

Shri Shdhir C. Halli, Advocate appointed for the appellants.

Shri A.M. Shringarpure, A.P.P. for the Respondent/State.

CORAM : S.S. PARKAR, &
ANOOP V.MOHTA, JJ.
DATE : 18TH JANUARY, 2005.

ORAL JUDGMENT (PER ANOOP V. MOHTA J.).

1. Appellant no.1 father and appellant no.2 mother, were charged, tried and convicted for the murder of their daughter Raijabai (the deceased). Therefore, present common appeal against the Judgment and order of conviction.

2. On the basis of an anonymous letter and a letter dated 1/9/1992, by P.W. 11 Hiraman Chavan, and in pursuance to the letter dated 4/9/1992 of the Judicial Magistrate F.C., Satana received on 25/9/1992, by the Police Station Jaikheda, the investigation was set in motion. As per the prosecution the deceased, pregnant

of 5 months, was missing since 28/7/1992. It is alleged that the appellants/accused killed the deceased by administering poison and buried the dead body in the field. On investigation a skeleton was exhumed from the land on 1/10/1992, in presence of an Executive Magistrate and a Doctor. The post-mortem of the skeleton was performed by the doctor and a panchanama was prepared. The statements of the witnesses were recorded. On 1/10/1992 accidental death was registered. However, on 9/10/1992 P.S.I.Gunjal, P.W. 1, lodged the complaint to Jaikheda Police station and accordingly offence was registered against the accused. They were arrested on 9/10/1992. On 14/10/1992, appellant No. 2 Sakubai, confessed the crime before the Special Judicial Magistrate P.W.10, Sudhakar More and admitted the crime by implicating appellant No.1 also, stating that the deceased who was residing with them at Katervel,Tal. Malegaon, Dist. Nasik had illicit relationship and was carrying pregnancy of two months. They poisoned her, as she was not disclosing the name with whom she had illicit relationship. After due investigation charges were framed against the appellants/accused under section 302 r/w section 34 and 201 of Indian Penal Code. The accused pleaded not guilty. Their defence was of total denial. Accused/appelant No.2 retracted from her

confession. Their additional defence was that the deceased died of natural death. The prosecution has examined 14 witnesses and there was no defence witness.

2A. The learned Additional Sessions Judge, Malegaon, District Nasik, by the impugned Judgment and Order, convicted the appellants for the charges referred above and also imposed sentence to suffer rigorous imprisonment for life and passed the consequential orders.

3. Heard learned Counsel Mr. Sudhir Halli, appointed Advocate for the appellants and the learned A.P.P., Mr. A.M.Shringarpure for the Respondent/State. We have gone through the record with the assistance of the learned Counsel appearing for the parties.

4. The conviction is based on the circumstantial evidence. Therefore, there is no direct evidence to connect the appellants with the crime. Out of 14 witnesses, P.W. 3, Yuvraj Soma Gaikwad, husband of the deceased; P.W. 4, Dhanraj Kashiram Pawar, the brother of the deceased; P.W. 5, Rekhabai Dhanraj Pawar, sister-in-law of the deceased and daughter-in-law of the appellants; P.W.8, Daji Malhari Pawar, the neighbour of

the appellants; P.W. 14, Indubai Kashiram Pawar, sister of the deceased were declared hostile and also could not support the prosecution case. Complainant P.W. 11, Hiraman Dawak Chavan and writer of the complaint; P.W. 12 Shamrao Onkar Malte were also unable to support the prosecution case.

5. The prosecution according to us, is unable to prove beyond reasonable doubt, that the death of the deceased was homicidal, as observed by the learned Judge. P.W.6, Dr.Machhindra, was present on the spot at the time of exhumation of the skeleton of the deceased on 1/10/1992. The doctor who had conducted post-mortem on the spot submitted the report Exh.31, has categorically opined that the cause of the death of the skeleton was difficult to detect. He has further deposed that except bones and some pubic hairs, there was nothing to give positive opinion about the cause of death. He has also deposed that there was no recognizable cause detected in C.A. report and therefore, exact cause of death could not be given, as the body was decomposed. He has further deposed that after perusal of C.A. report it is difficult to give opinion of the death, whether death was natural or unnatural.He has also deposed that it was not possible

to give any opinion about the pregnancy of the deceased.

5A. The prosecution was unable to bring on the record any other material to support their case of homicidal death, except the non-supportive evidence of P.W. 6,Dr. Machhindra Barde and P.W. 1, Jairam Gunjal, Investigating Officer. Merely, because at the instance of the accused, one poison bottle was found, that itself is not sufficient to support the prosecution case. As admittedly, nothing was detected or proved by the prosecution that the deceased was poisoned or poison was administered by the appellants and committed her murder. In the absence of any trace of poison and or material evidence to connect the appellants with the crime, the prosecution case according to us, cannot be accepted. The evidence of the Doctor relating to the pregnancy is also unsupportive. There was no trace of any pregnancy detected or opined by the medical evidence. In our view, merely because the skeleton was found at the instance of the accused on 1/10/1992 in the open field along with alleged instruments/ articles used for digging the earth and to bury the dead body, after laps of two and half months, by itself is no connecting evidence that can be used against the accused, as sought to be contended by the prosecution.

6. We have noted that the basic investigation was initiated as P.W. 11 Hiraman Chavan sent the letter Exh. 40, which was scribed by P.W. 12 Malte, as discovered letter on, based upon which after due investigation, on 1/10/1992 skeleton was excavated. In first anonymous letter there was no mention about any pregnancy or illicit relationship of the deceased with anybody. However, P.Ws. 11 and 12 in the letter (Exh.40) addressed to Police Station Jaikheda, received on 18/8/1992 and in their evidence, in the Court, improved the case and stated that there was illicit relationship of the deceased with Sakharam Pawar and she was carrying pregnancy of 5 months. It was not mentioned from which date the deceased was missing. As noted above, there was no such pregnancy opined by P.W.6 Dr. Machhindra. In the confessional statement, accused/appellant No.2 stated that the deceased was carrying the pregnancy of two months. In absence of medical evidence or any supporting material, mere oral evidence of these witnesses P.W. 11 and P;W. 12 and even on the alleged confessional statement of accused No.2, it is difficult to accept the prosecution’s case about the pregnancy. There was no other linking evidence to support the pregnancy. No other witnesses

were able to support the prosecution case of illicit relationship of the deceased with any person. On the contrary even as per the prosecution witnesses P.W. 11 and P.W. 12, itself, the villagers were aware about the illicit relationship of the deceased with one Sakharam Pawar. On the basis of the said rumour about the illicit relationship and pregnancy, the parents and specifically accused/appellant No.2, mother, insisted the deceased to tell the name of the person. However, as she failed to give the name of the person with whom she had illicit relationship, as per the prosecution, or even as per the confessional statement of accused No.2, the poison was administered and for that reason only the appellants had committed the murder of their own daughter. The confessional statement of accused/appellant No.2 itself was inconsistent with the evidence of P.W. 11 and P.W. 12, so far as months of the pregnancy and non disclosure of name with whom the deceased had illicit relationship. There is no corroborative evidence to support the pregnancy or illicit relationship of the deceased. Therefore, the motive of the parent to kill their own daughter in such circumstances is unacceptable basically for want of cogent or direct connecting evidence to support the prosecution case.

7. We have noted that the incident was dated 29/7/1992. The anonymous letter was lodged by P.W. 11 dated 1/9/1992. The police had reported the same as an accidental death on 1/10/1992. However, on the basis of the report dated 1/10/1992 accused were arrested on 9/10/1992. The confessional statement was recorded on 14/10/1992 of accused/appellant No.2 in the presence of P.W.7,Special Judicial Magistrate. All the necessary formalities had been complied with by the learned Magistrate, which were necessary before recording such confessional statement and accordingly, necessary endorsements are on the record. However, in her confessional statement we have noted that she was in police custody, 10 to 15 days before recording the confessional statement dated 14/10/1992. It appears that the accused were in custody for some time at least since 1/10/1992. However, the arrest of the accused were shown on dated 9/10/1992. Such confessional statement was not made by the accused/appellants No.1, even though he was in the custody along with the accused/appellant No.2. She herself was not sure, whether poison was administered by them or whether the deceased herself had taken the poison. As per her statement, the deceased was carrying the pregnancy of

two months, whereas, as per the basic anonymous complaint dated 1/9/1992, made by P.Ws. 11 and 12 and even as per prosecution, she was pregnant of 5 months. She also confessed that she was making the statement, because of their poverty. She had confessed that the said poison or medicine was in their house/Zopadi, as it was brought by the deceased herself. As noted the villagers knew about the illicit relationship of the deceased including the name of person with whom she had relations, as per evidence of P.W.11. But, still as per the confessional statement of the accused/appellant No.2, she was insisting her daughter to tell the name of person with whom she had illicit relations and as she refused to tell the name, the poison was administered. She had also confessed in her statement that the fact about pregnancy was known to the panchayat of their community, but detailed enquiry could not be conducted about the same, even as per P.W. 11 also. She had also stated that her daughter was not mentally fit and she was adamant.

8. We have also noted that the appellants in their statement under Section 313 of Code of Criminal Procedure (for short Cr.P.C.) had totally denied the confessional statement including prosecution case.

Therefore, now the question is whether on the basis of such retracted statement the impugned Judgment and the order of conviction is correct and sustainable. The Apex Court in **Ayub etc. V. State op U.P. (A.I.R. 2002 S.C. 1192 = 2002 AIR SCW 968)** has declared the related principles about the Confession to the police and or to the Magistrate, as provided under Sections 25 to 31 of the Evidence Act and under Section 164 of Cr. P.C. The procedural requirement, before recording the confessional statement, as per the settled guide-lines, once fully complied with and the confession if made voluntarily, such statement can be relied upon.In the present case, however, as recorded above and as contended by the Counsel appearing for the appellants, that the said confession cannot be said to be voluntarily, even though it was duly certified by the concerned Magistrate. Appellant No.2 was in the police custody, as stated in her confession, prior to 10 to 15 days of making of the said confessional statement. It means, she was constantly under police influence, for more than 10 to 15 days prior to the date of the confession. In the present case, the medical evidence nowhere supports even the confessional statement made by the accused No.2, in so far, as pregnancy of two months and even of the administration of the poison. There is

no direct evidence to support the case of the prosecution, that the accused had administered the poison to the deceased and that resulted into the death of the deceased. In view of these circumstances, the retracted confession cannot be the foundation to maintain the order of conviction, as imposed by the learned Judge. The Apex Court's decision in **Sandeep V. State of Haryana (AIR 2001 S.C. 1103 = 2001 AIR SCQ 1038)**, was also referred to by the Counsel appearing for the appellants to support his submission that such confessional statement in question should not be relied upon.

9. Therefore, we are of the view, that the learned Judge was wrong in convicting the accused by holding that there was corroboration to the confessional statement made by accused No.2 and further by observing that there was motive to kill their own daughter, as she refused to disclose the name of the person, with whom she had illicit relationship.

10. As noted that on 25/9/1992, P.S.I. Gunjal P.W. 1, received the letter from J.M.F.C. Satana, and according to him 1/10/1992 accused/appellant No.2 had confessed that they killed their daughter. Therefore he

knew that the accused had committed the crime. The enquiry was in progress and only after collecting the material, on 9/10/1992, the crime was registered. In the background, this explanation is unsatisfactory. This delayed missing complaint dated 1/9/1992 (Exh. 37) and initially registration of the accidental death on 1/10/1992 and however, on 9/10/1992, registration of the offence against the accused/appellants, all these events according to us, raises various doubts in the prosecution case. We have also noted that P.W. 1, P.S.I. Gunjal later on discovered that the P.W. 11 and P.W. 12 had lodged the said missing complaint on 1/9/1992 and accordingly, the prosecution was set in motion. The investigation was in progress since 25/9/1992; even though first anonymous letter was received by the police station on 18/8/1992, as stated by Jairam Gungal, (I.O.), P.W. 1.

11. There are improvements and contradictions in the testimonies of the witness. There is also no sufficient reason on the record given by the prosecution for such delay in taking action for initiating the proceeding in question. There is no proper justification given on the record, when once the case was registered as accidental case on 1/10/1992, what compelled them to register the

crime in question and to arrest the accused.

12. There is a evidence on the record to show that after the death of the deceased, in presence of the relatives and the villagers, she was buried in the land in question. Therefore, there was no total suppression of the death of the deceased. There was no material placed on the record by the prosecution to show that the appellants had concealed or screened the dead body of the deceased. The death was known to the family, as deposed by P.W. 4, Dhanaji Pawar, the brother of the deceased, in his cross-examination by the prosecution. This witness has deposed that they had buried her dead body, as she was expired. This witness has also deposed that he helped her parents in digging the ditch and buried the dead body of the deceased in presence of his uncle and 2 -3 villagers. This factual aspect was also not confessed by the accused/appellant No.2 in her confessional statement. The learned Judge therefore, wrongly disbelieved the evidence of P.W. 4 and held that the accused have failed to examine any ,independent defence witness from the village to show that villagers were present at the crucial time of the burial ceremony. If the death was known in the locality, then there is no question of punishing the accused/appellants under

Section 201 of Indian Penal Code, as done in the present case. According to us there is no material placed on the record to prove beyond reasonable doubt that the appellants had committed the murder of their daughter and screened the evidence to avoid the punishment. The various lacunas as pointed above raises various doubts and break the basic circumstantial links to connect the appellants with the crime in question.

13. The learned Judge was also wrong, by observing that there is evidence on the record that she was carrying the two months pregnancy. As we have noted that medical report is totally silent on this aspect. Therefore, except bare confessional statement of accused/appellant No.2 about the two months pregnancy, it cannot be said that she was pregnant and was carrying two months' pregnancy. As noted above that missing complaint by P.W. 11 and 12 referred and mentioned about 5 months pregnancy of the deceased.

14. There were regular quarrels between the appellants and the deceased, as deposed by P.W.11, P.W. 13 and 14 that itself cannot be the reason to accept the prosecution case that the appellant and no one else had committed the crime in question. For want of medical

evidence, the evidence of these witnesses, specially P.W. 11, 13 and 14 in respect of pregnancy is also unacceptable. We have already noted that P.W. 14 Indubai was declared hostile. The husband of the deceased, Yuvraj, P.W. 2 was not informed about the death, that itself cannot be the reason to draw inference against the accused/appellants, specially when there is a material on the record to show that deceased Raijabai was living with her parents, as she had deserted her husband Yuvraj. P.W. 8 was also declared hostile and therefore not supported the prosecution case.

15. The learned Counsel for the appellants has also relied on **Anilkumar Singh V. State of Bihar ((2003) 9 S.C. Cases 67)** and **George and others V. State of Kerla and another (AI.R. 1998 S.C. 1376 = 1998 AIR SCW 1255)**. The basic ingredients to support the order of conviction based on circumstantial evidence, which are missing in the present case are;

(a) Each and every piece of incriminating circumstance must be established clearly.

(b) The evidence must be cogent, reliable and

clinching.

(c) A chain of events should pin point the guilt of the accused and of no one else.

(d) the proved circumstances must be inter linked and connecting.

(e) mere moral conviction or a suspicion, however strong may be or any hypothesis, cannot be the foundation for such conviction.

(f) The accused are entitled for the benefit of doubt, if crops up or raises, in the facts and circumstances of the case.

. In the present case, the basic ingredients for such conviction as referred above, (a) to (d) are missing. The accused are therefore also entitled for the benefit of doubt. We are therefore, of the view, after re-appreciating the whole record and evidence that entire approach of the learned Sessions Judge was incorrect and the conclusions were wholly untenable and unsustainable.

16. The cumulative effect of this dislinking circumstance and regular breaks in the chain of events does not support the prosecution case and specially for want of medical evidence about the pregnancy, and of administration of the poison and the cause of death of the deceased. Apart from delay in lodging the missing report, and in registering the offence in question, merely on the basis of retracted statement of accused No.2, both the accused cannot be convicted for the offence in question. According to us, the benefit of doubt, in the facts and circumstances of the case, goes in favour of the accused. It is difficult to accept the prosecution case, that the appellants and no one else had committed the heinous crime in question. The prosecution has also failed to prove the respective role played by the accused to screen the evidence of the said offence. For the reasons as recorded above, we are of the view that there is a merit in the submission raised by the appellants in the appeal and therefore, the impugned Judgment and order dated 10/8/1994 of the conviction passed by the Additional Sessions Judge, is unsustainable. Therefore, the following order.

. The appeal is allowed.

. The Judgment and Order dated 10/08/1994 in Sessions Case No.18/1993 passed by Additional District & Sessions Judge, Malegaon is quashed and set aside. The appellants/accused are acquitted.

. Their bail bonds stand discharged.

[S.S. PARKAR, J.]

[ANOOP V. MOHTA, J.]